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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,062	12/09/2003	Shaun Mott	DI-33-031209	2960

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EXAMINER

SOOHOO, TONY GLEN

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/730,062

Applicant(s)

MOTT, SHAUN

Examiner

Tony G. Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5 and 7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5 and 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-3, 5, 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are unclear in what applicant regards as the invention. The preamble is directed to a subcombination of a "mounting assembly" of elements (a) and (b) in the body of the claim(s). However the body of the claim presents an element (c) which is a mixing means. It is unclear how the structure of a mixing means would perfect the operation and function of "a mounting assembly" as defined by the preamble. The elements of (a), (b), (c) and appears to be a mixer mounting assembly for mounting a mixer. However, if it is held that the invention is merely the mounting assembly, the feature of mixing means is beyond the subcombination of the mounting assembly and should be not be afforded any patentable distinction to the "mounting assembly". The claim is unclear if the invention is directed to the subcombination of a "mounting assembly" or the combination of "a mounting assembly and mixing means connected to the mounting assembly".

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3,5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ono 4596779 in view of Rescorla et al 5193908.

Ono teaches a container 40, a rigid lip mount defined at the outer edge of 46 and upper surface of 46, an aperture in the lip mount an aperture in the lip mount 46, a underside edge with a gasket padding 48 at the edge of the lip mount 46 and entirely below the bottom rim portion of the lip mount at the outer edge 46 whereas no gasket portion is above the lip mount edge at 46, a cover 44 with a thread to engage the neck of the container, and a mixing means with a drive shaft 50, 62, and agitator impeller 104, 51, and a motor 20, 26 drive assembly, 26, 20, 28 to rotate the agitator impeller which impels the fluid into an agitation type flow into the vessel 40. The term in the instant claims of an "impeller" does not define structurally any particular shape blade, paddles, wings or rotors. It is noted that the claim is of open construction, as defined the upper surface of the 46 is defined as the lip mount, any lower central portion of the surface of 26 is deemed as boss to hold the drive shaft.

The ONO reference 4596779 discloses all of the recited subject matter as defined within the scope of the claims with the exception of the rigid lip mount being

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positioned entirely above the lip (there appears to be a portion below the edge of the lip extending into the vessel 40), and with the exception of the motor being supported upon the cover and the lip mount (claim 1); the lip mount disc 46 being made of metal (claim 3) or the container being made of plastic (new claim 7). It is noted that it is old and well known in the art that the use of metal as a material provides strength, and stainless steel provides strength, ease of cleaning and reactive resistance and the use of plastic provides lower costs and ease of cleaning and reactive resistance. Since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, In re Leshin, 125 USPQ 416, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the material of the disc 46 of the ONO 4596779 device with a metal material such as stainless steel such that the device is stronger, provides an ease of cleaning and a reactive resistance surface to the materials used in the agitator, and also provide the container being made of plastic for the reasons outlined above to the advantageous use of plastics.

With regards to the motor, the reference to Rescorla et al teaches that an agitator vessel with a top cover 40 and drive shaft 18 with a shaft housing 14 may have an arrangement where the motor 12 is mounted directly to the shaft 18 and placed and supported upon the housing 14 and the top of the container lid.

In view of the teaching of Rescorla, that one may configure a drive motor directly above and supported upon the top of the vessel and shaft housing, it is deemed that it would have been obvious to one of ordinary skill in the art to substitute for the motor

drive assembly of Ono with a directly mounted motor as shown by Rescorla, so as to provide easy direct connection of the motor to the drive shaft.

Conclusion

5. This is a continuation of applicant's earlier Application No. 10/730062. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

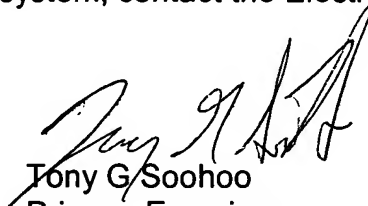
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 8AM-5PM, Tue-Fri.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G. Soohoo
Primary Examiner
Art Unit 1723